

**CERTIFICATE OF TRANSMITTAL VIA FACSIMILE**

I certify that the attached Petition Under 37 CFR 1.81(a) to Withdraw Notice of Abandonment and Exhibits A-F have been faxed to Tom Hawkins at the U.S. Patent and Trademark Office at (703) 305-8755 on October 1, 2003.

John F. Nethery, Reg. No. 42,928

  
Signature

October 1, 2003

Facsimile Date

Our Case No. 10022/28

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	)	
	)	
Wetzer, et al.	)	
	)	
Serial No. 09/825,633	)	<b>PETITION</b>
	)	
Filing Date: April 3, 2001	)	
	)	
For Performing Predictive Maintenance	)	
on Equipment	)	

**PETITION UNDER 37 CFR 1.181(a)  
TO WITHDRAW NOTICE OF ABANDONMENT**

Commissioner for Patents  
P.O. Box 1450  
Mail Stop: Issue Fee  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notice of Abandonment mailed September 15, 2003, Applicants submit this Petition to Withdraw Notice of Abandonment. No fee is believed due. As required by 37 CFR 1.181(a), a statement of facts, the points to be reviewed, and the action requested are set forth below:

### **Statement of Facts**

1. The Patent Office issued a first Notice of Allowance for this application on October 23, 2002, and required payment of the issue fee on or before January 23, 2003.

2. Applicants paid the issue fee (\$1330.00) and the publication fee (\$300) on January 22, 2003. The issue fee covered the base issue fee of \$1300 (effective January 1, 2003) and \$30 for 10 advance order copies of the issued patent. Applicants sent a return receipt postcard with the payments.

3. The Patent Office acknowledged receipt of the issue fee and the publication fee through a Postcard Receipt in accordance with MPEP 503. The post card specifically enumerates the issue fee (\$1330.00) and the publication fee (\$300). A copy of the return receipt postcard is included in this Petition and marked as Exhibit "A".

4. The Applicants submitted an RCE request on April 3, 2003, including a Petition to withdraw the application from issue.

5. The Patent Office granted the RCE request, and mailed a Decision on the Petition to Applicants on April 8, 2003. A copy of the Decision is included in this Petition and marked as Exhibit "B".

6. The Decision notes that, if Applicants requested, the Patent Office would apply the issue fee that the Applicants already paid in case a subsequent Notice of Allowance were received.

7. The Patent Office continued examination of the application, and issued a second Notice of Allowance on April 28, 2003.

8. In accordance with Applicants' prior payment of the issue fee, the second Notice of Allowance indicated an issue fee, publication fee, and total fee of zero (\$0.00) dollars. The "due date" was July 28, 2003. A copy of the second Notice of Allowance is included in this Petition and marked as Exhibit "C".

9. In response to the second Notice of Allowance, Applicants submitted to the Patent Office on May 20, 2003 a Fee Transmittal form PTOL-85(b) accompanied by a return receipt postcard that specifically listed the Fee Transmittal. A copy of the Fee Transmittal is included in this Petition and marked as Exhibit "D".

10. The Applicants, through a statement pre-printed on the Fee Transmittal form, noted that the "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above." A copy of the return receipt postcard is included in this Petition and marked as Exhibit "E".

11. Applicants also indicated on the Fee Transmittal form that the Commissioner was authorized to charge any required fees against Deposit Account No. 23-1925. As indicated on the return receipt postcard, Applicants submitted the Fee Transmittal form in duplicate.

12. Applicants have received a Notice of Abandonment ("Notice"), mailed September 15, 2003. A copy of the Notice is included in this Petition and marked as Exhibit "F".

13. The Notice states that the application is abandoned in view of Applicants' failure to timely pay the required issue fee. In particular, the Notice asserts that the issue fee has not been received.

#### **Points to be Reviewed**

Applicants request the Commissioner to review whether the Notice is appropriate for this application. As established above, the Applicants paid the issue fee on time in response to the first Notice of Allowance. Applicants subsequently properly requested the Commissioner to apply the issue fee to the application in response to the second Notice of Allowance received after the continued examination of the application. Moreover, Applicants requested that any required fees be taken from the identified Deposit Account. Thus, the Applicants respectfully submit that

the Notice is improper and that the application should have been passed to issuance.

**Action Requested**

1. Applicants respectfully request the Commissioner to withdraw the Notice, acknowledge payment of the issue fee, pass the application on to issuance, and provide Applicants with the ten (10) previously paid for advance order patent copies.

2. Applicants further request a recalculation of the Patent Term Adjustment under 35 USC 154(b) in light of the improper Notice and resulting issuance delay.

**Closing Remarks**

The Commissioner is invited to contact the undersigned attorneys for the Applicant via telephone if the Commissioner has any questions, comments, or concerns, or if a telephone conference would otherwise expedite the review of this Petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Nethery", is written over a horizontal line.

John Nethery  
Registration No. 42,928  
Attorney for Applicant

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, ILLINOIS 60610  
(312) 321-4200